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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,757	01/26/2004	Joseph J. Franzino		8773

7590 01/12/2006
Patrick J. Walsh, Esq.
400 Main Street
Stamford, CT 06901

EXAMINER

POPOVICS, ROBERT J

ART UNIT PAPER NUMBER

1724

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/764,757

Applicant(s)

FRANZINO ET AL.

Examiner

Robert J. Popovics

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1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,8 and 9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,8 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

Claims 1-3 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Carlilie (US 6,309,169) and Simpson (US 5,611,920). Independent claims 1 and 3 essentially differ from Carlilie by specifying a strainer. In this regard, strainers, to protect pumps, are notoriously well known in the art. Simpson provides an example of a pump upstream of a pump intake:

Just inward of valve 64 in the main flow way is a strainer 66 that keeps solids that may be present in the water from entering the inner parts of the generator 22.

Detailed Description Text - DETX (18):

The generator has its own pump 68, in the main flow way, preferably near the upstream end. In this case, the pump is shown as being connected into the main flow way just downstream of strainer 66, and powered by its own motor 70.

It is submitted that it would have been obvious to employ a strainer upstream of the pump intake to prevent larger debris from damaging or clogging the pump. There may be other minor differences between the claimed invention and the combination of references as applied above, such as, the specific orientation of the pump. However, such is not seen to rise to the level of a

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patentable distinction, as they constitute obvious matters of choice in design.

With respect to newly added claims 8-9, Carlilie does disclose the use of and outer housing 16. It is submitted that the specific components of the system covered by the outer housing constitute an obvious matter of choice in design to one skilled in the art. As such, the covering of any, or all components is considered obvious, in order to, for example, protect the components from the elements.

Claims 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Carlilie (US 6,309,169) and Simpson (US 5,611,920) and Aleman (US 4,683,067). Independent claim 4 essentially differs from Carlilie by specifying a strainer and a debris collection tool. In this regard, strainers, to protect pumps, are notoriously well known in the art. Simpson provides an example of a pump upstream of a pump intake:

Just inward of valve 64 in the main flow way is a strainer 66 that keeps solids that may be present in the water from entering the inner parts of the generator 22.

Detailed Description Text - DETX (18):

The generator has its own pump 68, in the main flow way, preferably near the upstream end. In this case, the pump is shown as being connected into the main flow way just downstream of strainer 66, and powered by its own motor 70.

It is submitted that it would have been obvious to employ a strainer upstream of the pump intake to prevent larger debris from damaging or clogging the pump. Aleman discloses the use of a suction wand 19. In view of the Aleman disclosure, it would have been obvious to employ a suction wand, in order to control/select the fluids to be removed. There may be other minor differences between the claimed invention and the combination of references as applied above, such as, the specific orientation of the pump. However, such is not seen to rise to the level of a patentable distinction, as they constitute obvious matters of choice in design.

Response to Arguments

Applicant's arguments filed 10/19/05 have been fully considered but they are not persuasive. Applicant has argued:

“None of these Carlile features discloses or suggests applicants invention of providing a cooling tower apparatus on a **hand truck** with **weight loaded toward the wheel end, particularly in fitting operating components to each other so that all are connected to the hand truck solely through a drive motor.** These distinguishing features applicants invention are clearly recited the claims record.” (Emphasis Added by Exmr.)

These arguments are not persuasive. The claims do not specify a ***“hand truck.”*** The ***“weight”*** is not specified to be ***“loaded toward the wheel end,”*** and the ***“operating components”*** are not seen to fitted together such that they are ***“all are connected to the hand truck solely through a drive motor.”*** Since the arguments are not commensurate in scope with the claims, they cannot be found to be persuasive.

The arguments against the Aleman reference appear to be essentially directed to the shape of the suction wand. Shape, absent a showing of unexpected results or criticality specifically associated therewith, does not ordinarily justify the award of a utility patent. Accordingly, the rejection is maintained.

The Restriction requirement is made FINAL.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Popovics whose telephone number is (571) 272-1164. The examiner can normally be reached on Monday through Friday between 2:00 PM and 6:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'R. Popovics', with a large, stylized flourish underneath.

Robert James Popovics
Primary Examiner
Art Unit 1724

January 6, 2006